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NEW HIGH LIMITED
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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 NEW HIGH LIMITED, a Hong Kong
14 corporation,

15 Plaintiff,

16 v.
17

18 DAVID LALWANI, an individual;
SEBASTIAN MARIA SCHILDHORN, an
19 individual; and BLIZZARD SA, INC., a
20 California corporation,

21 Defendants.
22

Case No.

COMPLAINT FOR:

- (1) PROMISSORY FRAUD;**
(2) FRAUDULENT TRANSFER –
ACTUAL FRAUD (CAL. CIV.
CODE § 3439.04(a); AND
(3) FRAUDULENT TRANSFER –
CONSTRUCTIVE FRAUD
(CAL. CIV. CODE
§ 3439.04(a))

DEMAND FOR JURY TRIAL

1 For its complaint against Defendants David Lalwani, Sebastian Maria
2 Schildhorn, and Blizzard SA, Inc., Plaintiff New High Limited (“Plaintiff” or “New
3 High”) hereby alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This Court has jurisdiction over the subject matter of this action
6 pursuant to 28 U.S.C. § 1332(a)(2) in that the action involves a plaintiff that is a
7 citizen of a foreign state, Hong Kong, and Defendant individuals that are citizens of
8 the State of California and a Defendant company incorporated under the laws of the
9 State of California, and the amount in controversy, exclusive of interest and costs,
10 exceeds \$75,000.

11 2. This Court also has personal jurisdiction over the Defendants because
12 each of the Defendants resides or has its principal place of business in this District.

13 3. Venue is proper in this district under 28 U.S.C. section 1391(b)(2)
14 because all defendants reside in this District, and venue is also proper under 28
15 U.S.C. section 1391(b)(2) in that a substantial part of the events or omissions giving
16 rise to the claims herein occurred in this District.

17 **THE PARTIES**

18 4. Plaintiff New High Limited is a corporation organized and existing
19 under the laws of Hong Kong, and having its principal place of business in Hong
20 Kong. New High is in the business of selling and exporting garments and textiles,
21 including selling and exporting to businesses in the United States.

22 5. Plaintiff is informed and believes, and on that basis alleges, that
23 Defendant Blizzard SA, Inc. (“Blizzard”) is a corporation organized under the laws
24 of the State of California, having its principal place of business in Whittier,
25 California. Blizzard is therefore a citizen of the State of California. At all times
26 relevant to the matters alleged herein, Blizzard’s Chief Financial Officer was Bill Li,
27 who simultaneously held the position of Chief Financial Officer of Navpeak, Inc.
28 (“Navpeak”).

1 6. Plaintiff is informed and believes, and on that basis alleges, that
2 Defendant David Lalwani (“Lalwani”) is an individual who resides and maintains
3 his domicile in Orange County, California. Lalwani was at all times relevant to the
4 matters alleged herein the General Manager of Navpeak, and a signatory on one or
5 more of Navpeak’s bank accounts.

6 7. Plaintiff is informed and believes, and on that basis alleges, that
7 Defendant Sebastian Maria Schildhorn (“Schildhorn”) is an individual who resides
8 and maintains his domicile in Orange County, California. Schildhorn was at all
9 times relevant to the matters alleged herein the Chief Executive Officer of Navpeak,
10 and a signatory on one or more of Navpeak’s bank accounts.

11 **NEW HIGH’S JUDGMENT AGAINST NAVPEAK**

12 8. New High shipped garments to Navpeak for several years. For each
13 transaction, Navpeak would issue a Production Order. The Production Orders
14 included a description of the garments, the quantities, the unit price and the total
15 price. The Production Orders also included the following venue and attorneys’ fees
16 provision: “California laws shall govern this order and the right and the obligations
17 of the parties hereunder shall be in the Superior Court, County of Los Angeles of
18 California. Prevailing party shall be entitled to all reasonable attorney fees and costs
19 from litigation.”

20 9. Each time New High shipped products to Navpeak, New High provided
21 Navpeak with an invoice (hereinafter, the “Invoices”) that included information
22 about the number of pieces shipped, a specific description of the goods, the unit
23 price and total amount due, and payment instructions.

24 10. Navpeak paid New High’s invoices issued prior to September, 2020 in
25 full. However, beginning with New High’s invoices issued from and after
26 September, 2020, New High began to fall into arrears on payments.

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1 11. By January, 2021, Navpeak was substantially in arrears on its
2 obligations to New High, and New High was demanding immediate payment of a
3 substantial portion of the unpaid balance.

4 12. A shipment from New High to Navpeak was in transit to the port of
5 Los Angeles on January 21, 2021. On that date, Defendant Lalwani sent an email to
6 New High's Operation Manager, Ka Hin Pi. Mr. Lalwani's email purported to be a
7 wire transfer confirmation from East West Bank showing a wire from Navpeak to
8 New High in the amount of \$40,000.

9 13. Based on Mr. Lalwani's representation that \$40,000 had been wired
10 from Navpeak to New High, New High allowed the shipment at the Port of Los
11 Angeles to be released to Navpeak.

12 14. Mr. Lalwani's representation was false, and the wire confirmation was
13 fabricated, as the wire transfer had not been made. Because of longstanding prior
14 relationships with Mr. Lalwani, New High relied reasonably on Mr. Lalwani's false
15 representation and allowed the goods to be released to Navpeak, when it would not
16 otherwise have released the goods without payment.

17 15. New High duly submitted to Navpeak Invoices for each of the
18 transactions reflected on the Navpeak A/R Statement, which Navpeak received
19 without objection. But Navpeak failed and refused to pay the subject Invoices, or
20 any of them.

21 16. On November 4, 2021, New High commenced an action in this Court
22 entitled *New High Limited v. Navpeak, Inc., et al.*, Case No. 8:21-cv-01843-JLS-
23 KES (the "Navpeak Action").

24 17. On August 19, 2022, the Court in the Navpeak Action entered a default
25 judgment against Navpeak in the amount of \$244,475.54 (the "Navpeak
26 Judgment").

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**POST-JUDGMENT DISCOVERY REVEALS THAT DEFENDANTS
WERE SIPHONING NAVPEAK'S FUNDS, LEAVING NAVPEAK
JUDGMENT-PROOF**

18. Following entry of the Navpeak Judgment, New High served subpoenas on several banks where Navpeak maintained accounts, including Bank of America, Wells Fargo Bank, JP Morgan Chase Bank and East West Bank. In response to the subpoenas, each of the banks produced responsive documents.

19. A review of the Navpeak bank account documents produced by the banks revealed that each of the Defendants received substantial sums of money from Navpeak's bank account shortly before and continuing well after Navpeak was refusing to pay New High's invoices.

20. Moreover, the bank records reflect that Navpeak continued to issue Production Orders to New High at the direction of Defendants Schildhorn and Lalwani during the time that each of them were siphoning money into their personal accounts, leaving Navpeak unable to pay for the goods Navpeak ordered and received from New High, creating a strong inference that when Navpeak issued the Production Orders at the directions of Messrs. Lalwani and Schildhorn, it had no intention of ever paying for the goods.

FIRST CLAIM FOR RELIEF

(Promissory Fraud)

(By Plaintiff against All Defendants)

21. Plaintiff realleges and incorporates by reference as though fully set forth herein the allegations of Paragraphs 1 through 20, inclusive.

22. The last payment New High received from Navpeak was in early December 2020, and even after the payment was received, Navpeak was still in arrears on its Production Orders dating back to September 2020.

23. From and after it made its final payment to New High, Navpeak, acting at the direction and under the control of Lalwani and Schildhorn, entered into a

1 series of written contracts with New High. The written agreements were created by
2 the issuance of additional Production Orders, which were accepted and performed
3 by New High and which were the subject of invoices issued by New High but not
4 paid, resulting in the unpaid balances that ultimately resulted in the Navpeak
5 Judgment.

6 24. Under the direction and control, and with the direct participation of
7 Messrs. Lalwani and Schildhorn, Navpeak entered into the contracts referenced in
8 the preceding paragraph with the intention not to perform the payment obligations
9 under the contracts, and knowing that instead of paying New High for the goods
10 New High provided under the contracts, Defendants Lalwani and Schildhorn would
11 siphon funds from the Navpeak bank accounts to their own benefit.

12 25. Defendants Lalwani and Schildhorn entered into the contracts with the
13 intent to induce New High to supply the goods referenced in the Production Orders.

14 26. New High, at the time the contracts were made and performed by New
15 High, was ignorant of the Defendants' secret intention not to pay for the goods
16 ordered from and delivered by New High, and New High could not, in the exercise
17 of reasonable diligence, have discovered the Defendants' secret intention.

18 27. In reliance on the Production Orders and promises of Navpeak (acting
19 under the direction and control of Defendants Lalwani and Schildhorn), New High
20 delivered the ordered goods as directed in the Production Orders, i.e., to Navpeak,
21 and New High submitted invoices in accordance with each of the Production Orders.

22 28. Had New High known that Defendants secretly intended to accept the
23 goods and not have Navpeak pay the invoices, New High would not have delivered
24 the goods.

25 29. As a direct and proximate result of the fraudulent conduct of the
26 Defendants as herein alleged, New High delivered goods to Navpeak for which was
27 New High was intentionally not paid, resulting in damages in an amount to be
28 proved at trial but at least \$172,005.30, exclusive of interest and fees.

1 30. The aforementioned conduct of the Defendants Lalwani and Schildhorn
2 was, for each Production Order, an intentional misrepresentation, deceit, or
3 concealment of a material fact known to the Defendants with the intention on the
4 part of the Defendants of thereby depriving New High of property or legal rights or
5 otherwise causing injury, and was despicable conduct that subjected New High to a
6 cruel and unjust hardship in conscious disregard of New High's rights, so as to
7 justify an award of exemplary and punitive damages.

8 **SECOND CLAIM FOR RELIEF**

9 **(Fraudulent Transfer – Actual Fraud (Cal. Civ. Code § 3439.04(a))**

10 **(By Plaintiff against All Defendants)**

11 31. Plaintiff realleges and incorporates by reference as though fully set
12 forth herein the allegations of Paragraphs 1 through 30, inclusive.

13 32. As alleged above, during the time period leading up to Navpeak's
14 payment defaults, and continuing through the period when Navpeak was ordering
15 and receiving new goods from New High, hundreds of thousands of dollars were
16 transferred from the Navpeak bank accounts to the personal accounts of Messrs.
17 Lalwani and Schildhorn and into the account of Blizzard.

18 33. Specifically, the initial transfers to Lalwani were made by Zelle
19 transactions from Navpeak's account at Bank of America to Lalwani between
20 August 19, 2020 and October 23, 2020, in the total amount of at least \$43,550.

21 34. Thereafter, between January 8, 2021 and June 15, 2021, at least
22 \$174,218.78 was transferred from Navpeak's account at East West Bank by
23 Navpeak checks made out to "Cash" and signed by Lalwani, which were
24 subsequently endorsed by and deposited or cashed by Lalwani.

25 35. Between March 15, 2021 and June 21, 2021, at least \$100,640 was
26 transferred to Schildhorn through cash withdrawals Schildhorn made from
27 Navpeak's account at Wells Fargo Bank.

1 36. Between April 8, 2021 and June 21, 2021, the net sum of at least
2 \$134,000 was transferred from Navpeak's account at Wells Fargo Bank to Blizzard.

3 37. New High is informed and believes, and on that basis alleges, that the
4 transfers of money from the Navpeak bank accounts to Blizzard and to Messrs.
5 Lalwani and Schildhorn were made with an actual intent to hinder, delay, or defraud
6 New High in the collection of the amounts due under New High's Invoices issued to
7 Navpeak.

8 38. New High is informed and believes, and on that basis alleges, that no
9 reasonably equivalent value was given in exchange for any of the transfers of funds
10 from the Navpeak bank accounts to Blizzard and to Messrs. Lalwani and
11 Schildhorn, and that the recipients of the transfers did not take the transfers in good
12 faith.

13 39. As a direct and proximate result of Defendants' conduct, New High
14 was damaged in an amount to be proved at trial but at least \$244,475.54, exclusive
15 of interest and fees, the amount of the Navpeak Judgment that was uncollectable due
16 to Defendants' conduct.

17 40. The aforementioned conduct of Defendants was done with the intention
18 of thereby depriving New High of property or legal rights or otherwise causing
19 injury, and was despicable conduct that subjected New High to a cruel and unjust
20 hardship in conscious disregard of New High's rights, so as to justify an award of
21 exemplary and punitive damages.

22 **THIRD CAUSE OF ACTION**

23 **(Fraudulent Transfer – Constructive Fraud (Cal. Civ. Code § 3439.04(a))**

24 **(By Plaintiff against All Defendants)**

25 41. New High realleges and incorporates by reference as though fully set
26 forth herein the allegations of Paragraphs 1 through 40, inclusive.

27 42. New High is informed and believes, and on that basis alleges, that the
28 assets remaining under Navpeak's control after each of the transfers alleged above

1 were unreasonably small in relation to Navpeak's business and that Navpeak
2 entirely failed and ceased to operate as a viable entity as a result of the unreasonably
3 small remaining assets with which to carry on Navpeak's business.

4 43. New High is further informed and believes, and on that basis alleges,
5 that as to the above-described transfers made after Navpeak was in default of its
6 payment obligations to New High, was insolvent at the time of the making of the
7 transfer, or that the result of the making of each of the transfers was that Navpeak
8 became insolvent in that at fair valuations, the sum of Navpeak's debts was greater
9 than the sum of its assets and/or that Navpeak was generally not paying debts as
10 they became due.

11 44. New High is informed and believes, and on that basis alleges, that no
12 reasonably equivalent value was given in exchange for any of the transfers of funds
13 from the Navpeak bank accounts to Blizzard and to Messrs. Lalwani and
14 Schildhorn, and that the recipients of the transfers did not take the transfers in good
15 faith.

16 45. As a direct and proximate result of Defendants' conduct, New High
17 was damaged in an amount to be proved at trial but at least \$244,475.54, exclusive
18 of interest and fees, the amount of the Navpeak Judgment that was uncollectable due
19 to Defendants' conduct.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff New High Limited prays for judgment against
22 Defendants as follows:

23 1. That Judgment be entered in favor of Plaintiff and against Defendants
24 on all claims for relief alleged herein;

25 2. On the First Cause of Action, for compensatory damages in an amount
26 to be proved at trial, but in excess of \$172,005.30, exclusive of interest and costs;

27 3. On the Second and Third Causes of Action, that the transfers from
28 Navpeak to Defendants Lalwani and Schildhorn be set aside and declared void as to

1 Plaintiff to the extent necessary to satisfy the Navpeak Judgment, plus interest
2 thereon at the applicable rate;

3 4. On the First and Second Causes of Action, for punitive damages to be
4 proven at trial;

5 5. For provisional remedies, including a right to attach order and writ of
6 attachment;

7 6. For prejudgment interest;

8 7. For costs of suit herein and attorneys' fees as allowed by law; and

9 8. For any further relief that the Court may deem just and proper.

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11 Dated: December 29, 2022

ONE LLP

12
13 By: /s/ Lawrence J. Hilton

14 Lawrence J. Hilton

15 Alec P. Schulman

16 Attorneys for Plaintiff,

17 New High Limited
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial on all issues triable to a jury.

Dated: December 29, 2022

ONE LLP

By: /s/ Lawrence J. Hilton

Lawrence J. Hilton

Alec P. Schulman

Attorneys for Plaintiff,

New High Limited